IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 179 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DHIJEN DHARSHI FAMILY TRUST

Appearance:
Mr.Akil Qureshi with MR MANISH R BHATT for Petitioner
MR HM TALATI for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT (Per A.R.Dave, J)

At the instance of the Revenue, the following 2

questions have been referred to this Court under the provisions of Sectin 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

"1. Whether on the facts and in the circumstances of the case, the assessee Trust could be treated as a specific Trust and whether the shares of the beneficiaries be treated as determinate?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee Trust was not a discretionary trust, but a specific trust and hence the provisions of section 164 of the Income-tax Act, 1961 could not be attracted?

2. We have heard Ld. Advocate Shri Akil Qureshi appearing for the Revenue and Ld. Advocate Shri Talati appearing for the assessee.

3. At the time of hearing of this reference application, it has been very fairly submitted by the learned advocates appearing for the parties that the questions which have been referred to this Court have now been covered in the case of the assessee itself in I.T.R.No.60 of 1985 decided on 31.8.2000. The 2 questions which have been referred to in the present reference were subject matter of I.T.Reference No.60 of 1985. The said questions are decided in favour of the assessee and against the Revenue. In view of the said judgement, we also decide the questions in favour of the assessee and against the Revenue. We dispose of this Reference application accordingly with no order as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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